

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER  
THE MCPHERSON BUILDING

901 FIFTEENTH STREET, N.W., SUITE 1100  
WASHINGTON, D.C. 20005-2327

(202) 682-3500

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NEW YORK (212) 836-8689  
WASHINGTON (202) 682-3580  
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FEDERAL COMMUNICATIONS COMMISSION  
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425 PARK AVENUE  
NEW YORK, NY 10022-3598  
(212) 836-8000  
1999 AVENUE OF THE STARS  
SUITE 1600  
LOS ANGELES, CA 90067-6048  
(310) 788-1000  
SQUARE DE MEEÛS 30  
1040 BRUSSELS, BELGIUM  
(322) 514-4300

WRITER'S DIRECT DIAL NUMBER

(202) 682-3526

July 14, 1993

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: MM Docket No. 93-178  
Howard B. Dolgoff  
(File No. BPH-911223ME)

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Howard B. Dolgoff, an applicant in the above-referenced comparative hearing proceeding (MM Docket No. 93-178), are an original and six (6) copies of his Motion To Strike in the proceeding. Kindly refer this submission to Administrative Law Judge John M. Frysiak.

Please direct any inquiries concerning this submission to

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )  
HOWARD B. DOLGOFF and )  
MARK AND RENEE CARTER )  
For a Construction Permit For a )  
New FM Radio Station on Channel )  
292A in Miramar Beach, Florida )

MM Docket No. 93-1708  
File No. BPH-911223ME  
File No. BPH-911224MD

TO: Administrative Law Judge John M. Frysiak

MOTION TO STRIKE

HOWARD B. DOLGOFF ("Dolgooff"). by his attorneys. hereby

dismissed as unacceptable for filing. Mr. Ellington states his objection to the determination by the Mass Media Bureau, in its Hearing Designation Order, to deny the Carters' Petition To Deny Mr. Dolgoff's application, and he requests the Commission to dismiss Mr. Dolgoff's Miramar Beach application as allegedly violative of the Commission's technical rules.

On July 13, 1993, Dolgoff filed with the Commission his Motion To Strike Mr. Ellington's letter of July 8, 1993, without any consideration whatsoever, on the ground that the letter essentially seeks intervention by the Chairman of the Commission in this proceeding in contravention of Section 0.341(a) of the Commission's Rules, which grants the Presiding Judge the authority to rule on matters in this proceeding, subject to certain exceptions not here relevant. For convenience, a copy of Dolgoff's July 13, 1993 Motion To Strike is annexed hereto as Exhibit 1 and is incorporated herein by reference.

It is most significant that: (1) at no point during the channel allotment rulemaking proceeding (MM Docket No. 89-126) involving the Miramar Beach, Florida, Channel 292A channel allotment, did the licensee of WKNV(FM) participate to seek to challenge the Commission's determination that applicants for the Miramar Beach channel could be processed under Section 73.213(c) of the Commission's Rules; (2) prior to designation for hearing of this proceeding, the licensee of WKNV(FM) never sought to

participate in any manner before the Commission to seek to deny Dolgoff's application; (3) the Commission's Mass Media Bureau released its Hearing Designation Order in this proceeding on June 28, 1993; (4) on July 6, 1993, the Carters filed with the Presiding Judge in this proceeding their Request To Certify Application For Review, in which they raise virtually the same issues which they raised prior to hearing designation in their June 4, 1992 Petition To Deny Dolgoff's application; (5) on July 8, 1993, Mr. Ellington, on behalf of the licensee of WKNU(FM), submitted his letter to Chairman Quello in this proceeding, in which he raised virtually the same issues which were raised by the Carters two days earlier in their July 6, 1993 Request To Certify Application For Review; and (6) one day following the date of Mr. Ellington's letter to Chairman Quello, counsel for the Carters filed Mr. Ellington's letter with the Presiding Judge in this proceeding, ostensibly for the purpose of providing a service copy of Mr. Ellington's letter to the Presiding Judge. Significantly, Mr. Ellington's July 8, 1993 letter to the Chairman of the Commission in this proceeding, and the July 9, 1993 correspondence from counsel for the Carters to the Presiding Judge in this proceeding were submitted while the Carters' July 6, 1993 Request To Certify Application For Review

~~submitted pending before the Presiding Judge in this proceeding~~

[REDACTED]

[REDACTED]

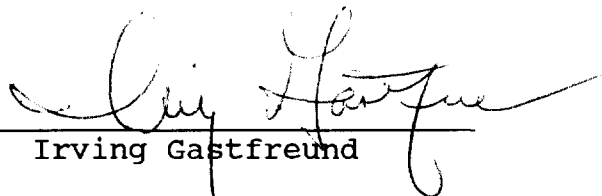
[REDACTED]

as the July 9, 1993 submission of a copy of that letter by counsel for the Carters to the Presiding Judge in this proceeding, may have constituted an orchestrated effort to influence the likelihood of obtaining a favorable resolution by the Carters on their pending Request To Certify Application For Review. If this was, indeed, what took place, such action would be wholly improper and an effort to circumvent Section 0.341(a) of the Commission's Rules. In any event, the Presiding Judge may not properly consider the content of Mr. Ellington's July 8, 1993 submission, since it was not addressed the Presiding Judge, and particularly since Mr. Ellington and the licensee of WKNU(FM) are not parties to this proceeding.

In light of all the foregoing, it is respectfully requested that the Presiding Judge summarily strike the July 8, 1993 letter from Mr. Ellington to Chairman Quello which was enclosed with the July 9, 1993 letter from counsel for the Carters.

Respectfully submitted,

HOWARD B. DOLGOFF

By:   
Irving Gastfreund

Kaye, Scholer, Fierman, Hays &  
Handler  
The McPherson Building  
901 15th Street, N.W., Suite 1100  
Washington, D.C. 20005

His Attorneys

July 14, 1993

Exhibit 1

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

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July 13, 1993

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: MM Docket No. 93-178  
Howard B. Dolgoff  
(File No. BPH-911223ME)

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Howard B. Dolgoff, an applicant in the above-referenced comparative hearing proceeding (MM Docket No. 93-178), are an original and fourteen (14) copies of his Motion To Strike. Kindly refer this submission to the Commission.

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS &  
HANDLER

By: 

Irving Gastfreund

Enclosures

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In re Applications of

)

MM Docket No. 93-178



In his letter, Mr. Ellington takes issue with the determination by the Mass Media Bureau, in its Hearing Designation Order in this proceeding<sup>1</sup>, to reject the contentions of Mark and Renee Carter ("Carters") (the competing applicant in this proceeding) that Dolgoff's application should have been dismissed as unacceptable for filing. Mr. Ellington states his objection to the determination by the Mass Media Bureau, in its Hearing Designation Order, to deny the Carters' Petition To Deny Mr. Dolgoff's application, and he requests the Commission to dismiss Mr. Dolgoff's Miramar Beach application as allegedly violative of the Commission's technical rules.

Dolgoff hereby respectfully requests that the Commission summarily strike Mr. Ellington's July 8, 1993 letter to Chairman Quello without any consideration whatsoever. As Mr. Ellington expressly recognizes in his correspondence, Dolgoff's application, as well as the competing application of the Carters, have been designated for a consolidated comparative hearing in the above-captioned proceeding, and this proceeding is now pending before Administrative Law Judge John M. Frysiak.<sup>2</sup> Mr. Ellington has never previously participated, prior to hearing

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<sup>1</sup> Hearing Designation Order, \_\_\_ FCC Rcd \_\_\_, DA 93-700 (Mass Media Bureau released June 28, 1993).

<sup>2</sup> Administrative Law Judge John M. Frysiak was designated as the Presiding Judge in MM Docket No. 93-178 by Chief Administrative Law Judge Stirmer in his Order, FCC 93M-431 (ALJ released July 1, 1993).

designation. in attempting to seek the dismissal of Dolgoff's

1993, correspondence to the Chairman without any consideration whatsoever.

Respectfully submitted,

HOWARD B. DOLGOFF

By: 

Irving Gastfreund

Kaye, Scholer, Fierman, Hays &  
Handler

The McPherson Building  
901 15th Street, N.W.  
Suite 1100  
Washington, D.C. 20005

His Attorneys

July 13, 1993

## Attachment 1

# WKNU<sub>FM</sub>

P. O. Box 458 • Brewton, Alabama 36427 • Phone (205) 867-4824 • 106.3 MHz • 5000 WATTS R & V

July 8, 1993

Chairman James H. Quello  
Federal communication Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Howard B. Dolgoff, File No. BPH-911223ME, MM  
Docket No. 93-178 (Miramar Beach, Florida, FM  
Proceeding)

Dear Chairman Quello:

I am the licensee of WKNU(FM), a Class A station on FM Channel 292A licensed to Brewton, Alabama. I have learned that in a Hearing Designation Order released June 28, 1993, in MM Docket No. 93-178, despite timely objection made by the competing Carter applicants, the Commission's staff has accepted an application by Howard B. Dolgoff for a new 6KW directional FM station on Channel 292A in Miramar Beach, Florida, that directly and adversely affects WKNU by depriving it of its reciprocal right pursuant to MM Docket No. 88-375 to increase power to 6kW.

The Miramar Beach applications are for a channel allocation sought before the Commission's relevant actions in MM Docket No. 88-375. As a result of the new short spacing requirements adopted in MM Docket No. 88-375, the Miramar Beach allocation is short-spaced to WKNU, but applicants were "grandfathered" under amended Section 73.213 (c) (1) of the Rules provided that in relevant directions they proposed not more than 3kW effective radiated power.

The Carter applicants complied with the grandfathering limitation to 3kW by proposing 3kW non-directional facilities. However, Dolgoff submitted a 6kW directional proposal that, while it ~~exceeded the grandfathered 3kW effective radiated power in an area~~

Chairman James H. Quello  
July 8, 1993  
Page 2

Please be advised that WKNU strongly objects to the staff action. I hereby call upon the Commission to reject Mr. Dolgoff's application as patently in violation of the Commission's rules.

Respectfully submitted,

  
Hugh Ellington,  
President

CC: Paulette Laden, Esq.  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20554

Frank J. Martin, Jr., Esq.  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404  
Telecopier: 202-637-3593

Irwin Gastfreund, Esq.  
Kaye, Sholer, Fierman, Hays & Handler  
901 15th Street, N.W.  
Washington, D.C. 20005  
Telecopier; 202-682-3580

**CERTIFICATE OF SERVICE**

I, Mary Odder, a secretary with the law firm of Kaye, Scholer, Fierman, Hays & Handler, hereby certify that on this 13th day of July, 1993, have caused a copy of the foregoing "Motion To Strike" be hand-delivered or to be sent via first-class United States mail, postage prepaid, to the following:

Chairman James H. Quello\*  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Commissioner Andrew C. Barrett\*  
Federal Communications Commission  
1919 M Street, N.W.  
Room 826  
Washington, D.C. 20554

Commissioner Ervin S. Duggan\*  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

John I. Riffer, Esq.\*  
Associate General Counsel - Adjudication  
Adjudication Division  
Office of the General Counsel  
Federal Communications Commission  
1919 M Street, N.W.  
Room 610  
Washington, D.C. 20554

Brian F. Fontes, Esq.\*  
Chief of Staff  
Office of Chairman James H. Quello  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Honorable John M. Frysiak\*  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W.  
Room 223  
Washington, D.C. 20554

Paulette Laden, Esq.\*  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 7212  
Washington, D.C. 20554

Chief Counsel, AGC 230  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, D.C. 20591

Frank J. Martin, Jr., Esq.  
Southerland, Asbill & Brennan  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404  
Counsel for Mark and Renee Carter

Mr. Hugh Ellington  
President  
Ellington Radio, Inc.  
Radio Station WKNU(FM)  
P.O. Box 468  
Brewton, Alabama 36427

  
Mary Odder

\*/ Via Hand-Delivery



CERTIFICATE OF SERVICE

I, Mary Odder, a secretary with the law firm of Kaye, Scholer, Fierman, Hays & Handler, hereby certify that on this 14th day of July, 1993, have caused a copy of the foregoing "Motion To Strike" be hand-delivered or to be sent via first-class United States mail, postage prepaid, to the following:

Honorable John M. Frysiak\*

Administrative Law Judge